

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of
Eschelon Telecom, Inc., for Arbitration
of an Interconnection Agreement with
Qwest Corporation Pursuant to
47 U.S.C. § 252(b)

FIRST PREHEARING ORDER

This matter came on for prehearing conference before Administrative Law Judge Kathleen D. Sheehy on June 30, 2006, at 9:00 a.m. at the Small Hearing Room of the Minnesota Public Utilities Commission (Commission), 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota.

Gregory Merz, Gray Plant Mooty, 500 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402-3796, appeared for Eschelon Telecom of Minnesota, Inc. (Eschelon). Jeff Oxley and Karen Clauson, 730 Second Avenue South, Suite 900, Minneapolis, MN 55402, also participated.

Jason D. Topp, Qwest Corporation Law Department, 200 South Fifth Street, Room 2200, Minneapolis, MN 55402, appeared for Qwest.

Julia E. Anderson, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101-2131, appeared on behalf of the Department of Commerce (Department). Edward Fagerlund and Katherine Doherty also participated.

Kevin O'Grady appeared for the staff of the Commission.

Based on the discussions during the prehearing conference, and all the files and proceedings herein, the Administrative Law Judge makes the following:

ORDER

1. The parties to this matter as named in the Commission's Order Referring Matter to the Office of Administrative Hearings for Arbitration, Assigning Arbitrators, and Giving Notice of First Prehearing Conference, dated June 23, 2006, are Eschelon, Qwest, and the Department.

2. Pursuant to Minn. R. 7812.1700, subp. 10, others wishing to participate in an interconnection arbitration are limited to status as observers.

Any person wishing to participate in the hearing as an observer must make such a request by July 31, 2006.

ISSUES

The parties have agreed that certain issues presented by Eschelon's arbitration petition will be stayed for later consideration in this docket after completion of two pending generic dockets. Issues 12-68, 12-69, A-99, and A-100 are stayed pending completion of the UNE Cost Case;¹ and Issues 9-37, 9-37(a), 9-37(b), 9-38, 9-39 (except caps), 9-40, 9-41, and 9-42 are stayed pending completion of the Wire Center Proceeding.² The parties' agreement is more fully described in correspondence from Eschelon to the Administrative Law Judges dated June 28, 2006.

SCHEDULE

3. The following schedule is adopted:

Joint Issues Matrix	August 1, 2006
Direct Testimony (Eschelon and Qwest)	August 25, 2006
Reply Testimony (Eschelon, Qwest, Department)	September 22, 2006
Surreply Testimony (Eschelon, Qwest, Department)	October 9, 2006
Evidentiary Hearing, beginning at 9:00 a.m. at the PUC	October 16-27, 2006

4. The deadlines for submission of post-hearing briefs and the recommended arbitration decision will be set at the conclusion of the hearing.³

¹ *In the Matter of Qwest's Application for Commission Review of TELRIC Rates Pursuant to 47 U.S.C. § 251*, Docket No. P421/AM-06-713.

² *In the Matter of CLECs' Request for Commission Approval of ILEC Wire Center Impairment Analysis*, Docket No. P-5692/M-06-211, and *In the Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Must Offer High-Capacity Loop or Transport UNEs at Cost-Based Rates*, Docket No. P-999/CI-06-685.

³ Eschelon and Qwest began negotiating this interconnection agreement some time ago. For purposes of this arbitration they have agreed that the window for requesting arbitration is between May 9, 2006, and June 5, 2006. Based on the timelines in 47 U.S.C. § 252(b) and Minn. R. 7811.1700, subps. 19 & 21, all outstanding issues must be resolved by February 9, 2007. See Petition for Arbitration at 6.

PROCEDURE

5. The rules of the Office of Administrative Hearings govern the conduct of the hearings, and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

FILING OF DOCUMENTS

6. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

7. All documents, including prefiled testimony **but excluding information requests and responses**, shall be filed as follows:

- A. Before the Arbitration Report is issued, two copies (one for each ALJ) shall be delivered or mailed to:

Administrative Law Judge Kathleen D. Sheehy
Administrative Law Judge Steve M. Mihalchick
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

- B. After the Arbitration Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission.
- C. Copies of all documents shall be served on the persons listed on the attached service list, in the number indicated. An electronic copy, where possible, shall also be sent by e-mail to persons whose e-mail address is provided on the service list. Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings.
- D. Pursuant to Minn. R. 1400.5100, subp. 9, and Minn. R. 7829.0400, subp. 1, the effective date of filing shall be the date the document is mailed or delivered to the Office of Administrative Hearings and the date the document is delivered to the Executive Secretary of the Commission. Filings with the Administrative Law Judge may be accomplished by e-mail, sent to: kathleen.sheehy@state.mn.us or steve.mihalchick@state.mn.us. Any filing sent by e-mail will be followed by a hard copy mailed that day.
- E. Proof of service shall be filed with each filed document or within three business days thereafter.

- F. An electronic copy of prefiled testimony shall be served on the other parties and the court reporter by 3:00 p.m. on the day it is due.

8. One copy of any document or information filed with or supplied to the Commission or the Commission staff shall be served on every party.

DISCOVERY

9. A party may serve requests for information on any other party. All requests for information shall be made in writing or by e-mail. Any request received after 4:30 p.m. on a business day, on a weekend day, or on a state holiday is considered received on the next business day.

10. The party responding to the request shall provide the requested information to the requesting party within eight business days of receipt of the request. A business day does not include weekend days or state holidays.

11. Responses to information requests shall be submitted on or before 4:30 p.m. on the due date.

12. In the event that requested information cannot be supplied within the required response time, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by either of the Administrative Law Judges upon motion of a party. Such motion should be made by e-mail notice and a telephone conference among the Administrative Law Judge and affected parties.

13. Parties asked to provide Confidential or Trade Secret Information may require the requesting party to comply with the terms of a protective agreement and order.

PREFILED TESTIMONY AND ORDER OF TESTIMONY

14. Prefiled testimony shall be marked and offered with exhibit numbers. Prefiled testimony that is amended, or not offered into the record, shall be considered withdrawn, and the sponsoring witness may not be cross-examined concerning the withdrawn testimony. Except for good cause shown, all substantive revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than October 9, 2006.

15. Except for good cause shown, any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in reply or surreply testimony and exhibits.

16. Unless the parties agree otherwise, the order of testimony and questioning in the evidentiary hearing shall be: Qwest, Eschelon, and the Department. The parties shall attempt to agree on the order of presentation of issues and witnesses.

EXAMINATION OF WITNESSES

17. Witnesses shall be allowed ten minutes to summarize their prefiled testimony. For good cause shown, witnesses will be permitted to respond to any new matters not addressed in prefiled testimony through direct examination by counsel.

18. Parties shall examine and cross-examine witnesses through their attorneys.

19. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judges, and serves a copy of such objections on the parties, no later than **October 9, 2006**. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony that is not objected to shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

Dated: July 14, 2006.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

s/Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge